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Attorney for Defendants, Defendants, ALVIN C. SILBERNAGEL D/B/A ALTAS REALTY D/B/A
ATLAS FINANCIAL SERVICES (erroneously sued herein as ALTAS REALTY/FINANCIAL
SERVICES, INCORPORATED, a California Corporation, dba ATLAS REALTY DBA ATLAS
FINANCIAL SERVICES), ALVIN CLAIR SILBERNAGEL, AND SAMANTHA TREVINO

UNITED STATES DISTRICT COURT
NORTHEAST DISTRICT OF CALIFORNIA

JUAN CUEVAS,

Plaintiff,

vs.

ALTAS REALTY/FINANCIAL SERVICES,
INCORPORATED, a California corporation,
D/B/A ATLAS REATY, D/B/A ATLAS
FINANCIAL SERVICES, ALVIN CLAIR
SILBERNAGEL, SAMANTHA TREVINO,
WORLD SAVINGS, INC., D/B/A WORLD
SAVINGS BANK, FSB, and DOES 1 through 100
inclusive

Defendants.

) Case No.: CV-07-2814-JF/PVT

)
) Complaint Filed: 05/30/2007

)
) Assigned to Jeremy Fogel
) Courtroom: 3 – Fifth Floor

) **EX PARTE APPLICATION FOR ORDER TO**
) **CONTINUE CASE MANAGEMENT**
) **CONFERENCE SCHEDULED ON**
) **NOVEMBER 2, 2007**

MEMORANDUM OF POINTS AND AUTHORITIES

Defendants, ALVIN C. SILBERNAGEL D/B/A ALTAS REALTY D/B/A ATLAS
FINANCIAL SERVICES (erroneously sued herein as ALTAS REALTY/FINANCIAL SERVICES,
INCORPORATED, a California Corporation, DBA ATLAS REALTY DBA ATLAS FINANCIAL
SERVICES), ALVIN CLAIR SILBERNAGEL, AND SAMANTHA TREVINO (hereinafter “Moving

1 Parties”), apply to this Court *ex parte* for an order continuing the Case Management Conference (CMC)
2 scheduled for November 2, 2007 until after this Court has ruled on Moving Parties’ motion to dismiss
3 for lack of subject matter jurisdiction pursuant to *F.R.Civ.P.*12(b)(1), currently before this Court and
4 scheduled for hearing on December 14, 2007.

5 The federal rules of civil procedure have given this Court power to grant Moving Parties’
6 requested continuance, stating, “When an act may or must be done within a specified time, the court
7 may, for good cause, extend the time: with or without motion or notice if the court acts, or if a request is
8 made, before the original time or its extension expires;” *see F.R.Civ.P.*6(b)(1).

9 Good cause exists for this Court to order a continuance in the Case Management Conference
10 scheduled for November 2, 2007 because the hearing scheduled for December 14, 2007 may moot the
11 purposes behind having the November 2nd CMC.
12

13 The only issues before the Court scheduled for November 2, 2007 are those pertaining to the
14 scheduling of certain future dates for additional hearings, case management conferences and other
15 routine although lengthy status report proceedings inherent to moving forward through the litigation
16 process.
17

18 In stark contrast, Moving Parties have properly submitted to this Court a motion to dismiss the
19 instant action for lack of subject matter jurisdiction under *F.R.Civ.P.*12(b)(1) (or alternatively for this
20 Court to exercise its abstention power).
21

22 If this Court sustains Moving Parties’ motion on December 14, 2007 then the November 2nd
23 CMC, and all the resources this Court must devote toward preparing for it and managing it thereafter,
24 will have all been for naught. This would be in addition to all the time and resources both Moving
25 Parties and Plaintiff will have expended to prepare for and follow up on this CMC only to essentially
26 repeat the whole process when, in the likely event Plaintiff subsequently elects to file suit in state court,
27 the discovery process begins again.
28

1 As this Court can see from a review of those moving papers already before this Court, there are
2 substantial grounds for Moving Parties to believe this Court will sustain Moving Parties' dismissal
3 motion. Consequently, this Court's resources would be best served and efficiency optimized if this
4 Court were to order a continuance of the November 2nd CMC until after December 14, 2007 when
5 Moving Parties' motion to dismiss will be heard and the relevance of having a CMC determined.
6

7 In the unlikely event that Moving Parties' motion to dismiss is not sustained, Plaintiff would in
8 no way be prejudiced by having the CMC in this case delayed until after December 14, 2007, which
9 could then be scheduled for anytime thereafter in accordance with the federal rules.

10 For these forgoing reasons, Moving Parties apply *ex parte* for this Court to order the Case
11 Management Conference scheduled for November 2, 2007 continued in accordance with *F.R.Civ.P.6(b)*
12 until its relevance can be determined by the outcome of Moving Parties' motion to dismiss Plaintiff's
13 claim for lack of subject matter jurisdiction pursuant to *F.R.Civ.P.12(b)(1)*, now properly before this
14 Court and scheduled for hearing on December 14, 2007.
15

16 Respectfully submitted by:

CARLSON LAW GROUP, INC.

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19 _____
20 Mark C. Carlson
21 Attorney of record for Defendants, ALVIN C.
22 SILBERNAGEL D/B/A ALTAS REALTY D/B/A ATLAS
23 FINANCIAL SERVICES (erroneously sued herein as
24 ALTAS REALTY/FINANCIAL SERVICES,
25 INCORPORATED, a California Corporation, dba ATLAS
26 REALTY DBA ATLAS FINANCIAL SERVICES), ALVIN
27 CLAIR SILBERNAGEL, AND SAMANTHA TREVINO
28

DECLARATION OF MARK C. CARLSON IN SUPPORT OF EX PARTE APPLICATION

I, Mark C. Carlson, declare as follows:

1. I am an attorney at law, duly authorized to practice law in the State of California. I am a principle at Carlson Law Group, Inc., attorneys of record for Defendants ALVIN C. SILBERNAGEL D/B/A ALTAS REALTY D/B/A ATLAS FINANCIAL SERVICES (erroneously sued herein as ALTAS REALTY/FINANCIAL SERVICES, INCORPORATED, a California Corporation, dba ATLAS REALTY DBA ATLAS FINANCIAL SERVICES), ALVIN CLAIR SILBERNAGEL and SAMANTHA TREVINO. I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I could and would competently testify thereto.

2. On October 10, 2007, on behalf of my clients for good cause and in good faith, I filed with this Court a Motion to dismiss Plaintiff's Complaint for lack of subject matter jurisdiction, originally scheduled for hearing on November 16, 2007 before this Court. The hearing date has now been continued to December 14, 2007 the same date and World Savings' Motion is scheduled. On this same day I supplied Plaintiff with notice of this motion.

3. The Motion to dismiss for lack of subject matter jurisdiction before this Court is likely to be sustained because Plaintiff failed to establish federal question jurisdiction over his claim even though he states it as his basis for federal jurisdiction. In fact, Plaintiff will be unable to cure this defect: Plaintiff's claim concerns one transaction and occurrence out of which Plaintiff has fashioned nine (9) causes of action for violations of four (4) California state statute, four (4) common law torts and one (1) cause of action for alleged violations of the Federal Truth in Lending Act. As stated in the dismissal papers, the alleged FTLA violation only tangentially relates to the facts of this case whereas difficult questions of state law and fact-dependent common law torts will control the action.

3. On October 12, 2007 I spoke with Plaintiff through his counsel and expressed the prudence and sensibility of continuing the Case Management Conference scheduled for November 2, 2007 in light of the

1 most recent motion filed on behalf of my clients and the likelihood for its success. Despite being apprised of
2 the current subject matter jurisdiction challenge, Plaintiff through his counsel would not consent to a
3 continuance.

4 4. The instant *ex parte* application for an order continuing the Case Management Conference
5 scheduled for November 2, 2007 is supported by good cause and is not being done for any improper
6 purpose. Both this Court and all the parties involved will benefit from being saved the trouble of preparing
7 joint statements, scheduling upcoming events, managing the case in accordance with the federal docket and
8 so forth given the likelihood that this case will be halted by this Court's lack of subject matter jurisdiction on
9 December 14, 2007.
10

11 5. Although the federal rules of civil procedure do not require official proof of service for an *ex*
12 *parte* application, I have provided Plaintiff with copies of this application along with the proposed order
13 submitted herewith.
14

15 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
16 and correct.

17 Executed this 19th day of October 2007, at Encino, California.
18
19
20
21

22 _____
Mark C. Carlson
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my present address is: 6345 Balboa Boulevard, Suite 257, Encino, California 91316.

On October 19, 2007 I served the foregoing document described as **EX PARTE APPLICATION FOR ORDER TO CONTINUE CASE MANAGEMENT CONFERENCE SCHEDULED ON NOVEMBER 2, 2007** on the parties by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

XX BY EMAIL to the parties as set forth on the Service List Attached hereto.

BY OVERNIGHT EXPRESS DELIVERY. I deposited it in a box or other facility regularly maintained by FEDERAL EXPRESS, or delivered it to a driver or courier authorized by FEDERAL EXPRESS to receive documents, in an envelope designated by FEDERAL EXPRESS, with deliver fees provided for, and with delivery requested for the next business day.

BY FACSIMILE TRANSMISSION, by use of facsimile machine telephone number (818) 345-1265, in accordance with Code of Civil Procedure §1013(e) and California Rules of Court 2.306, to the within parties at the facsimile number(s) indicated. The fax machine I used complied with Rule 2.301 and this transmission was reported as complete and without error. Under Rule 2.304, I caused the machine to print a transmission record of the transmission report which was issued by the transmitting facsimile machine, a copy of which is attached to the original thereof.

Executed on October 19, 2007 at Encino, California.

XX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

XX (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Ann A. Malone

Juan Cuevas v. Altas Realty/Financial Services Inc., et al
USDC Case No.: CV-07-2814-JF/PVT

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